

APR 15 1998

Geraldine Treutlein Crockett,
Clerk
/s/

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 98-30228
)	
LORENZO D. HORTON,)	Chapter 13
)	
Debtor.)	
		JUDGEMENT ENTERED ON APR 15 1998

ORDER DENYING APPLICATION FOR ADMINISTRATIVE EXPENSE

This matter is before the court on the Application for Administrative Expense filed by James Henderson ("counsel"). Counsel was listed as an unsecured creditor in this matter for professional services rendered and reimbursement of actual costs and expenses incurred as attorney for the debtor in a previous Chapter 13 bankruptcy filing. Counsel seeks to have this claim treated as an administrative expense in the current Chapter 13 proceeding. The court has reviewed the papers submitted in support of the motion filed by counsel and the objections filed by the Chapter 13 trustee and the attorney for the debtor. The court concludes that this motion should be denied based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Counsel represented the debtor in case number 96-32722, a Chapter 13 bankruptcy filed with this court December 20, 1996. The same case was dismissed in December, 1997.
2. The current Chapter 13 bankruptcy was filed January 30, 1998. The debtor is represented in this proceeding by attorney J. Carlton Roberts.

3. Counsel provided legal services to the debtor in connection with the 1996 Chapter 13 filing for which counsel has yet to receive the total compensation allowed by the court.

4. Counsel claims as due the amount of \$996.80 for base fees, non-base fees and expenses. Debtor listed counsel in his amended petition as an unsecured, nonpriority claimant for \$1066.80, which is a disputed amount.

5. Counsel filed an application for administrative expense for \$996.80, arguing that the work done in the previous Chapter 13 filing benefitted the estate created by the current Chapter 13 filing.

CONCLUSIONS OF LAW

5. 11 U.S.C. § 503(b) provides that:

After notice and hearing, there shall be allowed administrative expenses...including-

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case...

(emphasis added).

6. Because there is a presumption in the bankruptcy code that debtors' limited resources will be equally distributed among the creditors, the statutory priorities are narrowly construed. *Amalgamated Insurance v. McFarlin's*, 789 F.2d 98, 100 (2d Cir. 1986). The purpose for the § 503(b) administrative expense priority is "to give persons providing goods or services to a bankrupt estate an incentive to do so, and a reasonable assurance of payment." David M. Reeder, *The Administrative Expense*

Priority in Bankruptcy--A Survey, 36 Drake L. Rev. 135, 138 (1987). This policy aids the effective rehabilitation of the debtors' estate for the benefit of all creditors.

7. The bankruptcy estate in the current proceeding was created with the filing of the Chapter 13 petition on January 30 1998. The compensation application filed by counsel relates to work completed prior to the January 30, 1998 filing.

8. Extending administrative expense priority status to claims awarded in a prior, different bankruptcy case furthers neither the policy of preserving the estate in the instant case, nor the overarching objective of creditor equality. *In re Jartran, Inc.*, 886 F.2d 859 (7th Cir. 1984). Counsel would be elevated above other creditors for work done in an unrelated bankruptcy proceeding.

9. Although there could be truth to the argument that counsel's efforts in the previous bankruptcy preserved assets that were later put into the subsequent bankruptcy estate, to allow the application violates the plain language of 11 U.S.C. § 503(b), which references "services rendered after the commencement of the case" and a narrow construction of the priority language.

10. Payment of attorney's fees is provided for under both the Bankruptcy Code and the local rules for the Western District of North Carolina. There is nowhere any provision for an administrative claim in a subsequent bankruptcy filing for unpaid attorney's fees. To the extent that counsel has a claim in the

current bankruptcy estate, it is unsecured.

11. The court has concern that there is an ongoing potential for abuse of the bankruptcy provisions by debtors who file consecutive bankruptcies, with the result that attorneys would go unpaid for valid and necessary work performed in the prior filings. The remedy, however, is not to award them administrative status. Rather, the subsequent filing should be reviewed for potential bad faith issues and dismissal.

It is therefore **ORDERED** that Application for Administrative Expense Claim is hereby **DENIED**.



George B. Hodges
United States Bankruptcy Judge